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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,938	10/17/2005	Jerzy W. Chojnacki	02635/0202519-US0	1881

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EXAMINER

FLORES SANCHEZ, OMAR

ART UNIT	PAPER NUMBER
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3724

MAIL DATE	DELIVERY MODE
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10/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,938

Applicant(s)

CHOJNACKI ET AL.

Examiner

Omar Flores-Sánchez

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/16/5; 4/5/05.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “the guides are placed at a height equal at least to the height of the upper conveyor” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Also, the specification doesn’t disclose the feature.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the main conveyor" and "the cutterhead". There is insufficient antecedent basis for this limitation in the claim.

In claim 3, it is not clear if *the upper conveyor* 5b is a vibrating plate, because the specification and Fig. 1 disclose only the main conveyor 5a is the vibrating plate (see element 20a-c). Also, see claim 13.

In claim 9, line 2, *the upper surface* is inaccurate because in the specification, page 9, line 15-16, disclose *the below surface*.

In claim 13, "and/or" is indefinite, because it not clear how the conveyors moves independently *and* at the same time together.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4, 5, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824).

Regarding to claim 1, Ray discloses the invention substantially as claimed including a transporting device 10, a main conveyor 13 having a belt (see col. 1, line 67) which is situated at an angle beta (see Fig. 1), guides 23 coupled to the cutting machine, a cutterhead 22 and an access space (see Fig. 2, col. 1, lines 20-23). Ray doesn't show the guides coupled to the transporting device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Ray's device by providing the guides coupled to the transporting device for the purpose reducing the complexity of the device, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Ray discloses the claimed invention except for an angle beta from -10 to +10 degrees or 0 to 5 degrees. However, Ray teaches the conveyor 13 at an angle for the purpose of transporting the tobacco leaf. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Ray's device by providing the angle beta from -10 to +10 degrees or 0 to 5 degrees for the purpose of better transporting the tobacco leaf, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 f.2d 272, 205 USPQ 215 (CCPA 1980). Regarding claim 2, Ray teaches an upper conveyor 12. Regarding claims 4 and 5, endless conveyors (see col. 1, line 67) which are modular structure. Regarding claim 8, Ray teaches an

Art Unit: 3724

angle alpha (see Fig. 1). Regarding claim 11, Ray teaches the inclination of the angle beta is along a direction of transportation towards the outlet (see Fig. 1).

6. Claims 3, 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824) in view of Ray (5,040,549).

Ray'824 discloses the invention substantially as claimed except for a vibrating plate/portion. However, Ray'549 teaches the use of a vibrating plate 21 for the purpose of avoiding clog the conveyor mechanism. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray'824 by providing the vibrating plate as taught by Ray'549 in order to obtain a device that avoiding clog the conveyor mechanism. Also, Ray's conveyors are capable of moving independently or together.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824) in view of Muraoka et al. (5,316,132).

Ray discloses the invention substantially as claimed except for a material other than an alloy of non-ferrous metal. However, Muraoka et al. teaches the use of a support fabric 2 (see col. 3, lines 47-50) and thermoplastic material 3 for the purpose of ensuring an adequate longitudinal and transverse stability (col. 3, lines 58-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray by providing the support fabric and thermoplastic material as taught by Muraoka et al. in order to obtain a device that ensures an adequate longitudinal and transverse stability.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824) in view of Sherrill et al. (3,511,122).

Ray discloses the invention substantially as claimed except for front and rear rolls of the upper conveyor are independently adjusted. However, Sherrill et al. teaches the use of front and rear rolls (10 and 13) of the upper conveyor 5 are independently adjusted (see elements 11 and 15) for the purpose of adjusting the conveyor depending of the size of the product to be cut. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray by providing the front and rear rolls of the upper conveyor are independently adjusted as taught by Sherrill et al. in order to obtain a device that adjusts the conveyor depending of the size of the product to be cut.

9. Claims 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824).

Ray discloses the claimed invention except for the guides placed at a height equal at least to the height of the upper conveyor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray by providing the guides placed at a height equal at least to the height of the upper conveyor for the purpose of having better access to the conveyor area, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Art Unit: 3724

10. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824).

Ray discloses the claimed invention including a drive mechanism (see col. 1, lines 1-3). Ray doesn't show the drive placed on the front or rear rolls of the upper or main conveyors. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray by providing the drive placed on the front or rear rolls of the upper or main conveyors, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (5,012,824) in view of Korber (foreign pat. no. 694,375).

Ray discloses the invention substantially as claimed except for the transporting device joined to the lower knife and the edge of which is positioned in a working position at a near to zero distance from a surface of a cylinder defined by edges of the knives of the cutterhead. However, Korber teaches the use of a transporting device (see Fig. 1) joined to the lower knife 3b and the edge of which is positioned in a working position at a near to zero distance from a surface of a cylinder defined by edges of the knives 2 of the cutterhead 1 for the purpose of providing a better cut of the product. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Ray by providing the limitation mentioned above as taught by Korber in order to obtain a device that provides a better cut of the product.

Art Unit: 3724

Conclusion

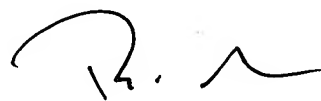
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bonneric, Brackmann et al. and Liebe et al. are cited to show related device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar Flores-Sánchez whose telephone number is 571-272-4507. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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9/17/2007



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